



Law Commission's Report – Leasehold on Home Ownership; buying your freehold or extending your lease

The Law Commission's long awaited report setting out proposals for the root and branch reform of leasehold enfranchisement law has now been published together with two further reports which recommend reforms of the right to manage and the law of commonhold. Together they set out how future home ownership is set to change.

This summary highlights the principal proposals regarding the enfranchisement regime.

As envisaged by the consultation paper, it is intended that there will be no distinction between houses and flats for the purpose of exercising rights of enfranchisement. There will be a new uniform right to a lease extension for a term of 990 years at a peppercorn ground rent in respect of a "residential unit". The two year ownership condition will be abolished. Leaseholders with very long leases (250 years is suggested) will have a new right to buy out the ground rent under their existing lease without having to extend its term and leaseholders with "onerous" ground rents will be able to extend the term of their leases without having to buy out their ground rents.

The new extended lease will be on the same terms as the existing lease with changes permitted only to address certain specified issues. In the case of both lease extensions and freehold acquisitions leaseholders will be able to claim rights which benefit their leasehold interests even if they have been granted by a third party independently of the lease, for example, a right of way. It will not be possible to agree lease extensions voluntarily on terms that are not consistent with the recommended new statutory regime.

A reformed right of collective freehold acquisition will enable claims to be made (through a corporate nominee purchaser with limited liability) in respect of multiple as well as single buildings together with more extensive rights to acquire additional land. It is proposed that leaseholders should be able to require freeholders to take leasebacks of units within the premises which are let to non participants. A freehold claim can be resisted if there has been a similar claim within the previous two years.

Controversially, the amount of permitted non-residential use in a building eligible for a collective freehold acquisition is to be increased from 25% to 50%. This limit is also proposed for multi-unit individual freehold acquisitions. It will no longer be a bar to a claim if the subject premises under or overhang other premises within the ownership of the freeholder.

In future enfranchisement disputes will be dealt with by the Tribunal in their entirety. Depending upon which

of the valuation options the government chooses to implement, it may no longer be possible for freeholders to recover their non-litigation costs from leaseholders and each party will be responsible for their own litigation costs save in very limited circumstances.

Proposals aired in the consultation paper but not pursued in the report include the right of a non-participant in a collective freehold acquisition to be given the right to purchase a share of the freehold interest at a later date and the right to make estate enfranchisement claims.

The effect of these recommendations, if implemented by the Government as anticipated, will amount to a complete overhaul of the leasehold system and mark a radical shift in the way enfranchisement claims are conducted. However, balancing the rights and obligations of landlords and tenants whilst introducing a much welcome simplicity to the law means the legislative road ahead looks set to be tortuous. How the law will shape up in consequence remains to be seen.